

# **EXHIBIT A**

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16 *Attorneys for Plaintiff* MEDIATEK INC.

17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

19 MEDIATEK INC.

20 Plaintiff,

21 v.

22 FREESCALE SEMICONDUCTOR, INC.

23 Defendant.

**Civil Action No. 4:11-cv-05341-YGR**  
**(JSC)**

~~[PROPOSED]~~ ESI DISCOVERY ORDER

Pursuant to the agreement of the parties, the Court ORDERS as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.

2. Costs will be shifted for disproportionate ESI production requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery tactics will be cost-shifting considerations.

3. A party’s meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.

4. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall not include metadata absent a showing of good cause. However, fields showing the date and time that the document was sent and received, as well as the complete distribution list, shall generally be included in the production.

5. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall not include email or other forms of electronic correspondence (collectively “email”). To obtain email, parties must propound specific email production requests.

6. Email production requests shall only be propounded for specific issues, rather than general discovery of a product or business.

7. Email production requests shall be phased to occur after the parties have exchanged initial disclosures and basic documentation about the patents, the prior art, the accused instrumentalities, and the relevant finances. While this provision does not require the production of such information, the Court encourages prompt and early production of this information to promote efficient and economical streamlining of the case.

8. Email production requests shall identify the custodian, search terms, and time frame. Through a meet and confer process, the parties shall cooperate to identify the proper custodians, proper search terms and proper timeframe.

1           9. Each requesting party shall limit its email production requests to encompass no  
2 more than seven (7) custodians per producing party for all such requests. The parties may jointly  
3 agree to modify this limit without the Court's leave. The Court shall consider contested requests  
4 for up to seven additional custodians upon showing a distinct need based on the size, complexity,  
5 and issues of this specific case. Should a party serve email production requests for additional  
6 custodians beyond the limits agreed to by the parties or granted by the Court pursuant to this  
7 paragraph, the requesting party shall bear all reasonable costs caused by such additional  
8 discovery.

9           10. Each requesting party shall limit its email production requests to include no more  
10 than fifteen (15) search terms per producing party for all such requests, with no more than seven  
11 (7) search terms used to search the email of any one custodian. The parties may jointly agree to  
12 modify this limit without the Court's leave. The Court shall consider contested requests for up to  
13 seven additional search terms upon showing a distinct need based on the size, complexity, and  
14 issues of this specific case. The search terms shall be narrowly tailored to particular issues.  
15 Indiscriminate terms, such as the producing company's name or its product name, are  
16 inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of  
17 overproduction. A conjunctive combination of multiple words or phrases (*e.g.*, "computer" and  
18 "system") narrows the search and shall count as a single search term. A disjunctive combination  
19 of multiple words or phrases (*e.g.*, "computer" or "system") broadens the search, and thus each  
20 word or phrase shall count as a separate search term unless they are variants of the same word.  
21 Use of narrowing search criteria (*e.g.*, "and," "but not," "w/x") is encouraged to limit the  
22 production and shall be considered when determining whether to shift costs for disproportionate  
23 discovery. Should a party serve email production requests with search terms beyond the limits  
24 agreed to by the parties or granted by the Court pursuant to this paragraph, the requesting party  
25 shall bear all reasonable costs caused by such additional discovery.

26           11. The receiving party shall not use ESI that the producing party asserts is attorney-  
27 client privileged or work product protected to challenge the privilege or protection.

1           12. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a  
2 privileged or work product protected ESI is not a waiver in the pending case or in any other  
3 federal or state proceeding.

4           13. The mere production of ESI in a litigation as part of a mass production shall not  
5 itself constitute a waiver for any purpose.

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7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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9 Dated: May 6, 2013



HON. JACQUELINE SCOTT CORLEY  
United States District Judge